

Pensions Audit Sub-Committee

10am, Monday, 16 December 2013

Class Actions

Item number	5.5
Report number	
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Executive summary

Class Actions

Summary

This report summarises activity on class actions.

A class action is when an investor agrees to act as a lead plaintiff in a case against a company. Typically, these actions happen in the US when a group of shareholders get together and sue a company to recover a loss in share value, or to exert influence on the company. A law firm fights the case on behalf of the class with the lead plaintiffs being treated as the representatives of the class. The cases can take several years to be heard by the courts and can be settled out of court. They are typically taken on a no win, no fee basis.

If a class action case is won, the compensation fund, net of legal fees approved by the court, is distributed to eligible shareholders who make a claim within the relevant time limit. Any shareholder that held shares during the class period is entitled to make a claim. The shareholders who lodge a claim share the compensation in proportion to the loss suffered. As shareholder, the Lothian Pension Fund claims for compensation on all relevant class action settlements.

In addition, the Lothian Pension Fund acts as lead plaintiff on a number of class actions, holding company management to account and aiming to deter future fraud and/or loss of shareholder value. This is consistent with its approach to environment, social and governance issues. Also, by acting as a lead plaintiff, the Fund may be in a position to influence the terms of the settlement. Summaries of the class actions where Lothian Pension Fund is acting as lead plaintiff are provided in the Appendix 1.

A court ruling in the case of Morrison vs. National Australia Bank (NAB) in 2010 has narrowed the ability of investors to seek redress under the laws of the US, particularly where shares are purchased on non – US stock exchanges.

Compensation received by the Fund from class actions is shown in the table below.

Financial Year	US\$ (000's)
Prior to 31/03/10	1,614
2010/11	209
2011/12	317
2012/13	483
2013/14 [1]	207
TOTAL [1]	2,830

[1]To 31 October 2013

The last Committee report in December 2012 contained figures for the first half of the 2012/13 financial year. In the second half of that year a further \$462k was received. This sum included large settlements from Countrywide and MF Global.

There have been 10 settlements so far this financial year, with a total value of \$207k. Included in these figures is a large payout from a class action against National City Corp. The smaller payments included sums from class actions against Washington Mutual and Wellcare Health Plans.

The Morrison vs. NAB ruling continues to impacts on the Fund's ability to claim for compensation in the US. As a result of the ruling investors are increasingly looking to obtain compensation through other jurisdictions where the legal process may require investors to "opt-in" to the case prior to the trial if they wish to participate. Officers have reviewed a small number of such cases and Lothian Pension Fund will consider the potential benefits and risks on a case by case basis.

Recommendations

It is recommended that the Pensions Committee note the content of this report.

Measures of success

Success will be measured by the number of actions successfully pursued and the compensation received.

Financial impact

US class actions are conducted on a no win no fee basis. In the event of a case being won, the courts approve the legal costs which are deducted from the compensation fund. The Fund has recovered \$2.8m in compensation from class actions.

Equalities impact

There are no adverse equalities impacts arising from this report.

Sustainability impact

Class action activity is undertaken as part of the Environmental Social and Governance (ESG) activity of the Fund which is expected to contribute to the sustainability of the Fund's investments.

Consultation and engagement

The Consultative Panel for the Lothian Pension Funds, comprising employer and member representatives, is integral to the governance of the Funds.

Regular updates on class actions have been provided to stakeholders.

Background reading / external references

Not applicable.

Links

Coalition pledges	
Council outcomes	CO26 – The Council engages with stakeholders and works in partnerships to improve services and deliver agreed objectives.
Single Outcome Agreement	
Appendices	Appendix 1 – Class Actions

APPENDIX 1 – CLASS ACTIONS

Summaries of the cases where Lothian Pension Fund is, or has been a lead plaintiff are outlined below:

- A case against Lehman Brothers is being progressed in relation to false financial statements and mismanagement at the company prior to the collapse of the bank. The case consists of separate claims against the directors, underwriters and auditors. The case was filed in 2008 and the estimated loss to the Fund is \$4.7m. Shares were purchased in the US. In August 2011, the case against the company directors agreed a settlement of \$90m. In May 2012 courts gave final approval to settlement of \$90m with Lehman directors and officers and \$426m with the underwriters. Litigation is ongoing with Lehman's accountants, Ernst & Young (E&Y). Although Lothian is lead plaintiff in the overall case it was not named as a class representative for the E&Y case. It was anticipated that settlement would be reached with Ernst & Young in the first half of 2013. However, although settlement is now nearing agreement, allocation of the settlement will be complex and is likely to be a lengthy process. As settlements are usually distributed together, this may delay receipt of settlement proceeds for all the different claims.
- The case against the pharmaceutical company Sanofi-Aventis was filed in 2007 and relates to misleading statements made by the company in relation to trials of a new drug, i.e. that the drug tests were successful when in fact the Company was receiving definitive information to the contrary. The Fund was initially serving as co-Lead Plaintiff alongside a pension fund from the United States and the Fund's loss was estimated to be \$1.5m. However after the Morrison ruling Lothian Pension Fund was removed as Lead plaintiff because it had made a gain on the shares purchased in the US, the Fund's approx £1m loss was made on shares purchased in France. The US case settled for \$40m but Lothian was not eligible to receive any of the US settlement fund. There is no known way to recover the non US loss and the French Statute of Limitation would likely preclude a claim. Lothian has now agreed to take no further action in this case.
- The Fund had an estimated loss of \$2.0m due to holdings in the company Wyeth. The case is premised on Wyeth's (now Pfizer, as a result of a merger) misrepresentations of clinical trial results for the investigational Alzheimer's drug, bapineuzumab. The Fund was appointed co-lead plaintiff (along with Italian investment fund, Arca) in September 2010. In the summer of 2011, defendants moved to dismiss the case and were successful. An amended complaint was lodged but this was dismissed. An appeal brief was then lodged with the US Court of Appeals in Boston, and argument took place on September 9, 2013. A decision will not be issued for several months.
- The case against Genzyme was filed in 2009 and the Fund's losses are estimated to be \$3.1m. The case relates to its failure to disclose serious issues at one of its manufacturing facilities that caused the company to halt production

of two of its top selling drugs due to contamination. The case was dismissed. However an appeal was lodged, as new information became available. The result of the appeal is pending.